IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.164 OF 1997
IN
LAND ACQUISITION REFERENCE NO.8 OF 1987

The Municipal Corporation of
Greater Mumbai, a body corporate
Constituted under the Bombay
Municipal Corporation Act, 1888
and having its Head Office at
Mahapalika Marg, Fort, Mumbai .. Appellants.
(Acquiring
Body).

V/s.

1. Vinayak Raoji Sunkersett, (deleted)
2. Satyavati V. Sunkersett, (deleted)
3. Dr. Narendra V. Sunkersett, (deleted)

3A. Vasanti Narendra Sunkersett,
3B. Ashok Narendra Sunkersett,
3C. Amol Narendra Sunkersett,
(the Claimants No.3A to 3C as
the heirs and legal represen-
tatives of the Deceased
Original Claimant No.3)

4. Ravindra V. Sunkersett
5. Surendra V. Sunkersett
6. Bhupendra V. Sunkersett
(Claimants Nos.2 to 6 for them-
selves and as the heirs and legal
representatives of the deceased
(Claimants Nos.2 to 6 for them-
selves and as the heirs and
legal representatives of the
deceased original Claimant No.1)

7. Bhalchandra Raoji Sunkersett, (deleted)
since deceased through legal
representatives as under

8. Rohini Bhalchandra Sunkersett (deleted)
9. Jaipal Bhalchandra Sunkersett
10. Bhupal Bhalchandra Sunkersett (deleted)
(Claimants Nos.8, 9 and 10 for
themselves and as the heirs and

legal representatives of the
original deceased Claimant No.7.

10A. Kumudini U. Khandke
10B. Vasundhara M. Mehta
10C. Mrudula P. Chikhlikar, (deleted)
as she had relinquished her
share in favour of claimant
Nos.8 and 9.

10D. Mrunalini J. Kadam,
(as heirs and legal represen-
tatives of deceased original
claimant No.7.)

10E. Anjali Bhupal Sunkersett
10F. Abhishek Bhupal Sunkersett
(the Claimants No.10E and 10F as
heirs and legal representatives
of Deceased Original Claimant
No.10)

11. Shri Vasantrao Raoji Sunkersett (deleted)

12. Smt. Indira V. Sunkersett (deleted)
(Since deceased through legal
representatives as under i.e.
Clainants Nos.11, 13 and 14.

13. Vilas V. Sunkersett,

14. Shri Uday V. Sunkersett
(Claimants Nos.11, 13 and 4 for
themselves and as heirs and legal
representatives of the deceased
original Clainants Nos. 12.

14A. Naina J. Joshi (deleted)
as the heirs and legal represen-
tative of original Clainants
Nos.12 as she had relinquished her
share in favour of Claimant
Nos.13 and 14.

all of Bombay, Indian
Inhabitants, residing at Nana
Sunkersett Smriti, 380-82,
Jagannath Sunkersett Road,
Bombay - 400 002. .. Respondents.
(Original
15. The Special Land Acquisition Claimants)
Officer (1), Bombay Municipal

Corporation, Bombay Suburban
Dist. Shri Chhatrapati Shivaji
Maharaj Market, 2nd floor,
Palton Road, Mumbai 400 001. .. Respondent.

Mr.U.J. Makhija with Mr.Vinod Mahadik i/b. A.K. Chheda for the appellant.

Mr.V.S. Kotwal with Mr.C.M. Korde, senior counsel & H.S. Engineer i/b. Gordhandas & Fozdar for respondent Nos.1 to 19.

Mr.Rajiv Mane, AGP for respondent Nos.20.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 30TH NOVEMBER, 2004.

ORAL JUDGMENT : (Per R.M. Lodha, J.)

. This appeal is at the instance of the acquiring body namely the Municipal Corporation of Greater Bombay (for short 'the Corporation') aggrieved by the judgment and decree passed by the learned single Judge of this Court enhancing the compensation in the land acquisition reference No.8 of 1987.

2. The land that has been acquired is the land bearing City Survey No.481 (Part) of Bhuleshwar Division admeasuring 2182 square metres. The Notification No.DPB/4379/3627/UD-5 was issued under Section 126 of the Town Planning Act on September 29,

1979 for acquisition of the aforesaid land for the purposes of market and road. The notification was published in the Government Gazette on November 1, 1979. The Special Land Acquisition Officer ('SLAO') fixed the market value of the acquired land at the rate of Rs.1,000/- per square metre. The SLAO passed the award to the expropriated owners in the sum of Rs.38,44,678.27 paise. The expropriated owners were not satisfied with the award of the SLAO being inadequate and, accordingly, they made an application before the SLAO on October 30, 1986 for making reference to this Court under Section 18 of the Land Acquisition Act. The reference was made to this Court and was numbered as Land Acquisition Reference No.8 of 1987. The claimants examined four witnesses namely Vasantrao Raoji Sunkersett (CW1), Chandrashekhar Dwarkanath Vaidya (CW2), Surendra Vinayakrao Sunkersett (CW3) and Milind Gotu Sambhare (CW4). The two witnesses CW1 and CW3 are the claimants themselves. CW2 and CW4 are practising valuers and architects. The claimants also tendered documentary evidence. On behalf of the acquiring body, one witness namely Vishnu Ramchandra Kelkar, the architect and government approved valuer was examined. The documentary evidence was also produced by the acquiring body.

3. The learned trial Judge of this court after hearing the parties held that the market value of the land under acquisition as on November 1, 1979 was Rs.3,750/- per square metre and fixed the market value of the acquired land at the rate of Rs.3,750/- per square metre. The claimants were also held entitled to solatium at the rate of 30% on the total market value. The learned trial Judge held that the claimants were entitled to damages for severance and injurious affection of the land admeasuring 311.00 square metres and awarded the damages for that land @ Rs.3,500/- per square metre. The learned trial Judge awarded interest at the rate of 9% per annum on the balance amount of compensation for the period from November 20, 1973 to November 19, 1979 and interest at the rate of 15% per annum for the period from November 20, 1979 to September 22, 1986 and from September 23, 1986 until January 31, 1996. The learned trial Judge also apportioned the award amongst the claimants.

4. As already noticed above, the present appeal has been preferred by the acquiring body aggrieved by the Judgment and decree passed by the learned trial Judge on February 1/29, 1996.

5. We perused the evidence available on record and we find that the market value at the rate of Rs.3,750/- per square metre fixed by the learned trial judge is not supported by the evidence on record. The market value fixed by the learned trial Judge is exorbitant and excessive. As a matter of fact, the learned senior counsel for the claimants/ respondents could not show the evidence on the basis of which the market value could be fixed at the rate of Rs.3,750/- per square metre. It appears from the available record that the parties agreed that as on March 25, 1971 the market value of the acquired land was Rs.1,000/- per square metre. There is evidence on record that shows that there was increase in the market value each year thereafter until promulgation of emergency i.e. June 26, 1975. There is also evidence that after the emergency was revoked there was substantial increase in the market value of the acquired land. Even as per the evidence of Vishnu Ramchandra Kelkar - the expert valuer examined by the acquiring body the rate of rise in market value was about 16% per annum. Taking into consideration the evidence on record, we are of the view that it would be reasonable to hold that at least there was 12% increase per annum in the market value of the land

from March 25, 1971 until the promulgation of emergency i.e. June 26, 1975 and that there was 16% increase per annum from the date of revocation of emergency i.e. March 21, 1977 until the date of acquisition i.e. November 1, 1979. The market value of the land on the date of acquisition can be worked out thus :

25-3-1971	1000	
25-3-1972	1120	(12% increase
25-3-1973	1254	per annum
25-3-1974	1405	"
25-4-1975	1574	"
26-6-1975	1621	"

(Promulgation of Emergency)

21-3-1977	1621	

(Revocation of Emergency)

21-3-1978	1880	(16% increase
21-3-1979	2181	per annum)
1-11-1979	2414	"

6 . The market value of the acquired land as fixed by the learned trial Judge at the rate of Rs.3,750/- per square metre is reduced to Rs.2,414/- per square metre.

7. As regards damages for severance and injurious affection of the land admeasuring 311.00

square metres, we are of the view that the award of compensation by the learned trial Judge at the rate of Rs.3,500/- per square metre is on higher side and needs reduction. After taking into consideration entire evidence on record, we are satisfied that the compensation for severance and injurious affection of land admeasuring 311.00 square metres may be awarded at the rate of Rs.1,950/- per square metre.

8. There is no serious dispute between the parties that the claimants are entitled to compensation under Section 23(1A) of the Land Acquisition Act and the said compensation comes to around Rs.42,37,400/-.

9. We modify the judgment and decree of the learned trial Judge and compute the compensation payable to the claimants as per our order thus :

			Rs.
A.	Market value of land under acquisition admeasuring 2120.36 sq.mtr. at the rate of Rs.2,414/- per sq.mtr.		51,18,549
B.	Market value of Structure valued at		100
C.	Total Market Value of Land and Structure	(A + B)	51,18,649
D.	Solatium 30% on total market value as per (C)		15,35,595

E.	Compensation payable under Section 23 (1A)	42,37,400
F.	Compensation for Severance and injurious affection of land admeasuring 311.08 sq.mtr.awarded at Rs.1,950/- per sq.mtr.	6,06,606
G.	Total Compensation as per (C+D+E+F) comes to amount of	1,14,98,250
H.	Advance compensation received	6,37,648
I.	Net Compensation payable (G-H)	1,08,60,602
J.	Amount deposited under SLAOs award on 22-9-86 in the Court	36,65,460
K.	Balance compensation payable (I-J)	71,95,142
L.	Interest on (K) above @9% per annum from 24-9-86 till 23-9-87.	6,47,523
M.	Interest on (K) above at 15% p.a. from 24-9-87 till 20-2-03	1,66,44,433
N.	Total Interest payable	1,72,91,995
O.	Interest Amount paid under Decree on Admission in Summary Suit No.2449 of 1987 filed by Claimants against Bombay Municipal Corporation	40,86,928
P.	Balance Interest Payable	1,32,05,067
Q.	Total amount payable to Claimants on 20-2-2003 (K + P)	2,04,00,209
R.	Amount deposited in Court on 20-2-2003	2,94,62,457

10. We clarify that aforesaid calculations were supplied by the learned senior counsel appearing for the claimants. As per the aforesaid calculations, the claimants are entitled to withdraw Rs.2,04,00,209/- with 69.2% of the accrued interest

on Rs.2,94,62,457/- and the Corporation shall be entitled to withdraw Rs.90,62,248/- with 30.8% of the accrued interest on Rs.2,94,62,457/-.

11. The appeal is partly allowed. The judgment and decree passed by the learned trial Judge is modified as indicated above.

12. The Prothonotary & Senior Master of this Court shall permit withdrawal of the amount by the claimants apportioned in the manner suggested in the affidavit of Jaipal Bhalchandra Sunkersett handed in today and marked ‘X’ for identification.

13. The parties to bear their own costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)